

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 4009 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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PRUTHVISH B DAVE

Versus

STATE OF GUJARAT

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Appearance:

MR NALIN K THAKKER for Petitioner

MR SP DAVE ADDL PUBLIC PROSECUTOR for Respondent No. 1

MR HK RATHOD for Respondent No. 2

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 27/07/1999

ORAL JUDGEMENT

#. This petition challenges the complaint lodged before the JMFC, Anand under Section 138 of the Negotiable instrument Act registered vide No : 6597/97 lodged by the respondent No.2 herein.

#. The short say of the complainant is that the present

petitioner had issued a cheque No : 516341 for Rs.30,000/- dated 12th march, 1997 drawn on Sardarganj Mercantile Co-Op Bank, Anand bearing in favour of Shree Laxmi Credit Co-Op Society Ltd. The said cheque was presented for encashment through Charotar Nagrik Charotar Nagrik Co-Op Bank, Anand and the same was dishonoured for want of balance in the account. A notice was therefore issued by the complainant to the petitioner which was duly served. Even despite that notice, there was no response from the petitioner. Thereafter, the cheque was again presented on 5-6-1997 for encashment and the same was again dishonoured with an endorsement of insufficient balance in the account. The intimation was given to the complainant on 6-6-1997 and therefore, a notice was served on the petitioner. The petitioner did not pay any heed to the notice and therefore, the complainant was lodged on 9-7-1997. The learned Magistrate after recording the statement, directed to register the complaint and further directed to issue summons for offence under Section 138 of the Negotiable Instruments Act.

#. It has been argued by Mr.Thakkar, learned advocate on behalf of the petitioner that the complaint deserves to be quashed on two counts. One is that the complainant is neither the payee nor a holder in due course and there is no averment to that effect in the complaint. His second contention is that the complaint is time barred as admittedly, on return of cheque, on 12th March, 1997, a notice was served and therefore, the cause of action for the complaint started running from the date of receipt of the notice by the petitioner. Second presentation of the cheque and issuance of the second notice cannot extent the period of limitation for cause of action arose on service of the first notice. In support of his arguments, he has pressed in service the decision of this High Court in case of DIPENDRA G. CHOKSHI & ANR. V. KAILASHCHANDRA C. DHOOT & ANR. 1995 (1) G.L.R. 424 and in the case of SADANANDAN BHADRAN V. MADHAVAN SUNIL KUMAR JT 1998 (6) SC 48.

#. Mr.Rathod opposing this petition stated that averments made in the petition about the forcibly obtaining cheque etc. are false. He says that the Court may not technically apply decisions to the facts of the present case and may help rendering of substantive justice.

#. Mr.Dave, learned APP has requested the Court to pass appropriate orders in the matter.

#. Considering the rival side contentions, first point that requires to be noted is that the complaint does not speak of the date of the receipt of the notice by the petitioner on either occasion. But admittedly the cheque was presented twice and on both the occasions notices were served on the petitioner. Assuming that the notice was served and received in time, on the first occasion, then the complaint would be time barred keeping in light the provisions of Section 138 read with Section 142 (b) of the Negotiable Instrument Act. The second presentation of cheque or service of notice cannot revive the cause of action which has already expired due to afflux of time in light of the provisions of Negotiable Instrument Act. In this regard, the decision in case of SADANANDAN BHADRAN V. MADHAVAN SUNIL KUMAR (Supra) can squarely be applied. It has been observed that Section 138 of the Negotiable Instruments Act, does not put any embargo upon the payee to successively present a dishonoured cheque during the period of its validity. It is further observed that Section 138 and 142 of the Negotiable Instrument Act have to be read with harmony with each other and then it was observed that once a notice is given under Clause B of Section 138, the right in case of failure of the drawer to pay the money within stipulated time, would give rise to cause of action. It is also held that Clause (b) of Section 142 carries a restrictive meaning. Only one fact will give rise to the cause of action and that is the failure to make payment within 15 days from the date on which notice is received by the drawer. Second presentation and second issuance of second notice will not revive the cause of action if has already expired. Nor does it give a second / fresh cause of action.

#. The present case is therefore squarely covered by the decision of this Court. On this ground alone, the petition deserves to be allowed without making any observations on other questions as to competence of the complaint etc. The petition therefore is allowed. The complaint impugned registered vide No : 6597/97 herein and the order therein are quashed and set aside. Rule is made absolute accordingly.

Date : 27-7-1999 [ A.L.Dave, J. ]

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